

TEACHERS' RETIREMENT BOARD MEETING SEPTEMBER 8, 2006

CALL TO ORDER:

Chairman Scott Dubbs called the meeting to order at 8:30 a.m., in the Teachers' Retirement System Conference Room, 1500 East 6th Avenue, Helena, Montana.

BOARD MEMBERS PRESENT:

Chairman, Scott Dubbs
Tim Ryan
Mona Bilden
Kari Peiffer
James Turcotte
Darrell Layman

STAFF PRESENT:

David L. Senn, Executive Director
Tammy Rau, Deputy Executive Director
Dave Ohler, Legal Counsel
Dan Gaughan, Accounting/Fiscal Manager
Johnelle Sedlock, Benefits Officer

OTHERS PRESENT:

M. Ruth Barrett, Eastgate School
Debbie Gibson, Radley Elementary
Kim Aarstad, East Helena Schools
Ron Whitmoyer, East Helena Schools
Merle Farrier, Retired Teacher
Tom Bilodeau, MEA-MFT
Charlotte Thomas, Montana Retired Educators' Association

CALL TO ORDER

Adopt Agenda – Chairman Scott Dubbs called for additions or changes to the Agenda for September 8, 2006. Seeing none, Chairman Dubbs requested a motion to adopt the Agenda.

MOTION/VOTE Mr. James Turcotte moved that the agenda be approved. It was seconded by Mrs. Mona Bilden. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

Approval of May 19, 2006 Minutes – Chairman Dubbs called for changes to the May 19, 2006, Board meeting minutes.

MOTION/VOTE Mr. Darrell Layman moved that the May 19, 2006, minutes be adopted. It was seconded by Mrs. Kari Peiffer. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

Investment Report; Mr. Jim Turcotte referred the Board to the Quarterly Performance Report, page 13, showing positive performance for the year.

Mr. Ryan asked how comfortable are we with the custom benchmarks, and those that are customarily accepted in the industry? Mr. Turcotte explained the Board of Investments (BOI) was working with R.V Kuhns to realign the benchmarks. Mr. Turcotte added that the BOI has started to build a real estate portfolio and have committed \$30 million.

PUBLIC COMMENT: Chairman Dubbs called for public comment on Board related items.

Ms. Charlotte Thomas made the comment that the retired teachers are having five district meetings and have invited all retirees to attend. They are happy that Dave will be able to attend four out of the five meetings.

Executive Director Report

Administrative Rules Mr. David Senn recommended Administration Rule 2.44.412 be amended to comply with recent changes in the federal regulations requiring that members reemployed after being called to active duty, be given up to three times the period of the member's uniformed service, not to exceed 5 years, to pay the employee contributions that would have been made had they not been absent before interest can be assessed. Because the dissimilar time periods create several programming challenges, Mr. Senn recommended all returning members be given up to 5 years to pay the employee contributions without interest.

MOTION/VOTE Mr. Ryan moved to change the administrative rule as recommended. It was seconded by Mr. Turcotte. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

Legislation – Teachers' Retirement Board

Housekeeping Proposal; Mr. Senn reviewed the changes included in the general housekeeping proposal. Mr. Senn also explained that changes to Internal Revenue Code Section 415 were pending, which, when finalized, could require additional amendments to the teachers' retirement act.

Family law Orders – The draft proposal would allow the Courts to carve out a piece of the member's benefit to be paid for the life of an alternate payee.

Membership Eligibility for Paraprofessionals – Clarify that all instructional paraprofessionals, as defined by the no Child Left Behind Act, are required to be members of the TRS.

County Superintendents - Require elected county superintendents, who are retired members of TRS, file a written irrevocable membership election with TRS.

Payment Of Interest On Dormant Accounts - Amendment requiring accounts transferred from dormant status to the annuity saving account include interest.

Health Insurance Premiums - Require employers to use the TRS electronic reporting system for withholding insurance premiums.

Designation of Beneficiaries and Payment of Benefits if no Designated Beneficiary is on File - Current law states that benefits will be paid to the guardian; proposed amendment will change guardian, to personal representative or executor.

Date of Termination for Purpose of Termination Pay Irrevocable Election - Clarify that the date of termination for purpose of this election is the last day the member is in a pay status.

Eligibility of Non-Vested Inactive Members To Purchase Service - Clarify that members who terminate employment and are vested maintain all their rights to purchase additional service.

Calculation of Annualized Compensation – Correct a typographical error in §19-20-805, MCA.

TRS/ORP Membership - Clarify that members cannot concurrently participate in both the Teachers' Retirement System and the Optional Retirement Plan.

Funding Proposal: Mr. Senn explained that the proposal to actuarial fund the TRS currently included: \$100 million infusion of cash; closure of loopholes related to salary spiking, and return to work; increasing the State contribution to the TRS; and increasing the MUS ORP supplemental contribution rate.

Mr. Ryan stated that nothing in the proposal addresses the revenue short-fall needed to increase GABA that the legislature approved a number of years ago. He was concerned that to the TRS retirees it appears that we are going to, at some time, increase GABA to 3.0%. However, the fact of the matter is, without additional funding, we are not ever going to be able to increase GABA. Mr. Ryan recommended the funding proposal include a provision to strike this section of the law.

Alternative Plan Design - Mr. Senn explained the purpose of this proposal is to study, during the 2007-09 interim, alternate defined benefit or hybrid plan designs that will more adequately provide retirement benefits for future TRS members, provide for stable contribution rates, and not exacerbate the actuarial funding of the current TRS plan.

Other Proposals and Public Comment on Legislation - Mr. Senn briefly discussed the 25 bill drafts currently requested by Legislators and/or Interim Committees.

Identity Theft Legislation - Mr. Senn reported that the Economic Affairs Committee has requested legislation be drafted requiring all public entities to adopt policies protecting a person's identity.

MEA-MFT Proposed Legislation – Mr. Tom Bilodeau reported the MEA-MFT will have two proposals for the 2007 Session affecting retirement. One will increase the MUS ORP employer contribution rate 1.0%. The second will revise the TRS return to work limits, requiring at least a 6-month break in service and include fringe benefits in the 1/3 earnings limit.

Public Comment - Chairman Dubbs asked if there is anyone in the public who would like to take this opportunity to present other legislative proposals or to comment on any of the proposals discussed. There were none.

Executive Summary – Mr. Senn reported that on June 22, 2006, the State Administration and Veterans' Affairs committee met to review proposed legislation. The committee voted to approve for drafting all retirement proposals. The committee will meet again on November 28 & 29, 2006, and vote to either recommend or not recommend each retirement proposal to the 2007 Legislature.

The Joint Issues Committee met on May 18, 2006, following the TRS Asset/Liability Study presentation. MPERA will be providing support staff to the Committee for 2006-07. The committee discussed the unfunded liability issues and where the funding will come from. General obligation bonds and increasing employer contributions were addressed, but generally not supported by the committee. It was also agreed the committee should meet at least two times per year, but possibly more often this year to address the funding issues. The next meeting of the Joint Issues Committee will be September 28, 2006, after the actuarial valuations are completed.

Other Business

Next Meeting Date – The Board tentatively agreed to meet on November 17, 2006, February 9, 2007, May 2, 2007, September 7, 2007, and November 16, 2007.

Financial Statements, Budget & Travel Reports – Mrs. Tammy Rau presented the TRS financial statements and budget status. Mrs. Rau pointed out there are no new delinquency agencies to report this quarter.

Mr. Ryan noted that security lending is down 50% and asked about the use of securities lending. Mr. Turcotte offered to look into why securities lending had dropped off.

NCTR Trustee Conference Report – Ms. Peiffer reported the speakers were excellent. Interesting to her were the different actuary speakers. For her the best part was the collegial part in speaking with teachers, sponsors, and learning how they got involved, government appointed, elected.

Darrell Layman agreed with Ms. Peiffer. Found the presentation on communications to be most valuable. He liked the concept of training people to be on the boards. Colorado has their whole training system on the internet to train members of the Board.

Applications and Retirement Benefits - Regular, Survivorship, Adjustments and Corrections – Mr. Senn presented a list of members who have applied and retired since our last meeting. Scott asked if it would be possible to have this sorted in groups of school districts and state agencies and universities. Mr. Senn indicated it would be no problem to have this ready for our next meeting.

Disability Applications

Executive Session to Discuss Disability Applications & Annual Reviews – The Chair directed the meeting be closed to review disability applications since the individual's right to privacy of information pertaining to disability benefits clearly exceed the merits of public disclosure.

Disability Retirement Applications – The Chair reopened the meeting to the public.

MOTION/VOTE Ms. Bilden moved that the disability application for Majel D. Dominguez be approved. It was seconded by Mr. Ryan. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

Ms. Layman moved that the disability application for Patricia E. Roberts be approved. Seconded by Ms. Peiffer the motion carried unanimously.

Ms. Bilden moved that the disability application for Ann C. Russoff be approved. Seconded by Ms. Peiffer the motion carried unanimously.

Ms. Peifer moved that the disability application for Linda A. Fischer be approved. Seconded by Mr. Ryan the motion carried unanimously.

Annual Disability Reviews - The staff recommends that Kimberly Gaub be removed from disability review.

MOTION/VOTE Mr. Ryan moved that Kimberly Gaub be "excluded" from future disability reviews. It was seconded by Ms. Bilden. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

Individual Petitions Mr. Senn presented the petition of the East Helena paraprofessionals. For over 4 years, the District reported two Reading Tutors (retired TRS members) and their TRS eligible Paraprofessionals to the Public Employees' Retirement System (PERS). The District has advised that teacher aides are one and the same as paraprofessionals. In 1989 the Board adopted administrative rules requiring all teachers' aides who are assisting a certified teacher in the education and instruction of students in the regular curriculum of the institution to be active members of the TRS. Teachers' aides employed prior to September 1, 1989, who remained in the PERS, are not eligible to participate in the TRS while employed as a teacher's aide with the same employer. The district has indicated that only one person was in a teacher's aide position prior to 1989 and reported to PERS. Current law requires teachers' aides to be members of TRS.

Mr. Whitmore, Superintendent, East Helena Schools stated the situation in East Helena has a two fold effect. First in the past they had read the rule to exclude paraprofessional from TRS membership. They now read it to mean that these people are instructional of the general curriculum, provided that statement does not exclude Special Education, and agree paraprofessionals belong in the TRS.

The second group is the retired reading tutors. Mr. Whitmore informed the Board this came about because of the reading tutor's first grant. This grant was outside of the general fund and also outside of what they were paying for the paraprofessionals. First they decided to contract these people as independent contractors, but in looking at the rules and comparing them to paraprofessionals, they decided it would not be right for them not to participate in the retirement system. They compared them to jobs similar to theirs and what they decided was that they were outside TRS and were in PERS. For that reason, PERS was chosen as the correct retirement system. Now in looking at it, they believe they should be TRS.

Mr. Whitmore added that the school district did try to get some help thru TRS when researching this, they didn't go blindly. The reading tutors also contacted the TRS and likewise, no one caught it at that time that there was a problem with their classification. They did this in good faith, and in self defense they tried to do the proper thing.

Ruth Barrett, reading tutor, explained that when she was hired as a reading tutor, in East Helena, she was told that her income would be reported to PERS, which it was. She stated she called TRS and explained the situation and again was told there should not be a conflict and that her contributions were to be reported to PERS. She did not know there was a problem until June 2006. She asked the Board to be forgiving, and reiterated she acted in good faith.

Debbie Gibson, reading tutor, explained: she, too, was unaware of any conflict in reporting her contributions to the PERS. On each of her check stubs it showed her benefits went to PERS, and that is what she thought to be true for the past 4-1/2 years. She found out at the end of June that there was a conflict and that her position should have been reported to TRS. In this case she would not have qualified for early retirement. What seems to be a simple reporting error to TRS is in actuality a grave financial burden for her, if that is the Board's resolution. In good faith she asked that the Board consider this in their decision.

Chairman Dubbs responded that in relation to the first question regarding positions of employment, they would qualify as TRS positions.

Mr. Ryan added there doesn't seem to be much disagreement, with the teachers or the school district, that they should be reported to TRS.

Chairman Dubbs noted the Board needed to decide how they should correct this. He asked if there have been any comparable situations like this in past.

Mr. Senn responded that any time there has been a reporting error, TRS corrected those situations by requiring contributions be transferred to the correct retirement system. When it involved recovering benefits being overpaid, the law required the benefits be repaid to TRS, or

that future benefits be actuarially reduced.

Mr. Senn explained that in Ms. Gibson's case there are a couple of options. TRS can wait until Ms. Gibson retires, and then actuarially adjust future retirement benefits and recover the amount overpaid over her lifetime, or she can repay the amount due TRS in a lump sum or in monthly payments agreed to by the Board.

Mrs. Kari Peiffer asked what the School District's position was in helping these members recover losses.

Mr. Whitmore responded that the School District didn't feel they did this with an effort to defraud, it was an honest mistake. There was no malice, and if they can help these teachers in any way, they will. He pointed out that they've been working with them, but monetarily, he wasn't sure if they could help them."

MOTION/VOTE Mr. Ryan moved the Board authorize Mr. Senn to enter negotiations with both the school district and the individuals involved, to work within the parameters that we all agree that they are reportable to TRS. Motion was seconded by Mr. Turcotte. Motion was withdrawn.

MOTION/VOTE Mr. Ryan moved to authorize Mr. David Senn to negotiate and suggest alternatives for repayment without interest, so parties on both sides can work out an amiable solution within the restrictions, with the understanding that these individuals are TRS members and the outline resolution shall be agreeable to both parties. Mr. Senn will let the Board know the results of this resolution at the November Board meeting. It was seconded by Mrs. Bilden. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

10% Cap –Multiple Employers – Mr. Senn presented the petition of Ms. Diane Fladmo who is retiring effective September 1, 2006. Mr. Senn explained, during the three years preceding her retirement Ms. Fladmo was employed by both the Prairie View CO-OP and the University of Montana–Missoula. Mr. Senn presented a spreadsheet with her wages for the past three years showing the calculation of the 10% cap. If the 10% cap was applied, Ms. Fladmo would have excess earnings of \$41,742.32. The question is which employer is liable for the \$40,416.75 employer contributions. The required employee contribution would be \$38,642.87 and the monthly benefit increase would be \$519.46.

Administrative Rule 2.44.518(2)(d) allows for an exemption to the 10% cap if the excess earnings have resulted from a "change in employers". The questions before the Board are: Does working for more than one employer qualify as a "change in employers", and therefore, would Ms. Fladmo's excess earnings be exempt? If not, which employer would be liable for the employer contributions?

Mr. Senn shared another case that recently came to staff's attention where a member did work for two employers with one giving an increase greater than 10%.

MOTION/VOTE Ms. Peiffer moved that the Board waive the 10% cap in this case, and amend the administrative rule to clarify that if earnings in excess of the 10% cap are the result of the

cumulative increases granted by multiple employers that the cap be waived, but if a single employer grants an increase greater than 10% that the cap be applied. It was seconded by Mr. Ryan. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

Legal Counsel Report

Merle Farrier – Mr. Ohler reported that a hearing was held on July 27, 2006. Thomas G. Bowe, Hearings Examiner from the Attorney Generals Office, was appointed to conduct a hearing and issue Proposed Findings of Fact, Conclusions of Law and a Recommended Order with respect to: whether the Board is entitled to receive reimbursement for the benefits paid to Mr. Farrier and to which by law he was not entitled; the amount owed the Teacher's Retirement System and how it will be repaid or offset; and, Mr. Farrier's presentation of any equitable or legal defenses that would preclude the Board from seeking recovery.

On August 1, 2006, the Hearings Examiner submitted his Findings of Fact, Conclusions of Law, and Proposed Decision. Mr. Bowe concluded that: the Board is entitled to reimbursement; the amount owed the Teacher's Retirement System is \$84,828.73, which consists of \$53,146.72 in overpaid benefits and \$31,682.01 in interest to July 1, 2006. The Hearings Examiner did not determine the method of repayment. The Hearings Examiner found that Mr. Farrier was given an opportunity to express a preference concerning the repayment method, but declined to do so; and, Mr. Farrier did not establish any equitable or legal defenses that would preclude the Board from seeking recovery. Staff recommends the Board adopt the proposed decision of the Hearing Officer.

Following the Hearings Examiner's Proposed Findings of Fact, Conclusions of Law and Recommended Order, Mr. Farrier presented to the Board a document dated August 29, 2006, entitled "Preliminary Information Pertinent to equitable or legal defenses which would preclude the Board from seeking recovery under the circumstances of this case."

Mr. Farrier reviewed for the Board the document dated August 29, 2006.

MOTION/VOTE Mr. Ryan made a motion that the Board authorize Mr. Senn to work together with Mr. Farrier to create a payment plan to the TRS, and if a mutually agreeable method of repayment was not reached, that repayment of Mr. Farrier's retirement benefits would be made by actuarially adjusting his retirement benefits as provided in §19-20-705(1), MCA. It was seconded by Mr. Turcotte. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

Mr. Senn asked if Mr. Farrier would send him a written proposal for repayment of the amount owed so they have a starting point for negotiations.

Case Update - Mr. Senn informed the Board that we continued to receive monthly payments from Roger Ogren against what he owes TRS.

Election of Officers

MOTION/VOTE Mr. Ryan moved for the continuation of the current Officers. It was seconded by Mr. Turcotte. Chairman Dubbs asked for further discussion or public comment, finding none, the motion carried unanimously.

X. Adjournment

There being no further business, the meeting adjourned at 2:42pm.

Chairperson_____

Executive Director_____